

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Insurance
Producer's License and Real Estate
Sales Person's License of Jay T.
Williams

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis at the Office of Administrative Hearings in St. Paul on April 7, 2009.

Assistant Attorney General Michael J. Tostengard appeared on behalf of the Minnesota Department of Commerce. There was no appearance by or on behalf of Jay T. Williams (Respondent). The record closed at the conclusion of the hearing on April 7, 2009.

STATEMENT OF ISSUES

1. Whether the Summary Suspension issued in this matter on March 12, 2009 should be **CONTINUED**, pending final resolution of proposed disciplinary action against the licenses of the Respondent; and
2. Whether it is appropriate to take disciplinary action against the licenses of Jay T. Williams?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 12, 2009, a Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges (Notice) in this matter was mailed to Respondent Jay T. Williams at his last known address.
2. The Notice in this matter indicates, on page 4:
 1. Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that

the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

3. No Notice of Appearance was filed by the Respondent, nor were the Administrative Law Judge, the Department, or the Office of Attorney General notified of any request to reschedule the hearing.

4. The Statement of Charges in this matter alleges that after Mr. Williams was terminated from employment at the Workman Insurance Agency, agency personnel discovered that he had engaged in improper activity, including the forging of at least three documents, that he had prepared a fraudulent insurance application on behalf of a client in an attempt to place insurance for a property which had already suffered a fire, and that Mr. Williams had created a fraudulent Proof of Insurance form for a Workman client to submit to the Minnesota Department of Labor and Industry.

5. The Department's Investigator, Attorney Martin Fleischhacker, introduced and interpreted Department Exhibits 1-11, and offered additional testimony. Fleischhacker established a factual basis for proof of the allegations noted in the preceding Finding.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction herein pursuant to Minn. Stat. §§ 14.50, 45.027, 60K.43 and 82.41.

2. The Notice of Hearing was proper, and the Department has complied with all procedural requirements.

3. Minn. R. 1400.6000 provides that an agency or Administrative Law Judge may dispose of a contested case adverse to a party which defaults. The Rule provides further that the allegations set out in the Notice of and Order for Hearing may be taken as true or deemed proved without further evidence if a default occurs without the prior consent of the Judge.

4. Jay T. Williams is in default in this matter, so it is appropriate to deem as true the allegations set out in the Notice of and Order for Hearing, and to deem them proved without further evidence.

5. Through the documents introduced at the hearing, and the testimony of Martin Fleischhacker, the Department proved the allegations noted against Jay T. Williams in the Statement of Charges portion of the Notice.

6. The Department has proven by a preponderance of the evidence that Jay T. Williams violated Minn. Stat. §§ 45.027, Subd. 7(a)(4), 60K.43, Subd. 1(8), 60K.46, Subd. 2, 82.35, Subd. 1(b), and 82.41, Subd. 13(c).

7. It is appropriate to continue the Summary Suspension of the Respondent's Insurance Producer's and Real Estate Sales Person's Licenses, pending final determination of the licensing issues in this matter.

8. An Order continuing the Summary Suspension of the licenses of Jay T. Williams and imposing appropriate disciplinary action against his Insurance Producer's and Real Estate Sales Person's Licenses is in the public interest within the meaning of Minn. Stat. § 45.027, Subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATIONS

IT IS RECOMMENDED that appropriate disciplinary action be taken against the Insurance Producer's License and Real Estate Sales Person's License of Jay T. Williams; and

IT IS RECOMMENDED FURTHER that the Summary Suspension issued in this matter, suspending the Insurance Producer's and Real Estate Sales Person's Licenses of Jay T. Williams, be continued, pending final determination of disciplinary action, if any, against the licenses.

Dated: April 20, 2009

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Digitally Recorded
No Transcript Prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Attn: Sue Jensen, Minnesota Department

of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

After the hearing on April 7 had been concluded for more than an hour, at approximately 11:45 a.m. that day, Mr. Williams appeared at the Office of Administrative Hearings. The Administrative Law Judge met with Mr. Williams and explained to him that the hearing was over, and that the Administrative Law Judge would be issuing a Report without further proceedings. It was explained to Mr. Williams that the Administrative Law Judge had decided to proceed on the record that had been made earlier that morning, and that if Mr. Williams chose to pursue the matter further, he would be given the opportunity to file exceptions to the Report of the Administrative Law Judge. He was informed also of how to obtain a recording of the hearing and copies of the exhibits, to aid him in deciding whether to pursue this matter further.

The procedures for filing exceptions are noted in the body of this document.

R. C. L.